

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 504 of 1996
in
SPECIAL CIVIL APPLICATIONNO 2856 of 1996

with

LETTERS PATENT APPEAL No 1219 of 1997
with

LETTERS PATENT APPEAL No 504 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE D.P.BUCH

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

ODEDRA LAKSHMANBHAI JADAVBHAI

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 504 of 1996
MR DD VYAS for Appellants
Mrs Siddhi Talati, AGP for Respondent No. 1, 2, 3

2. LETTERS PATENT APPEALNo 1219 of 1997

MR R C Jani for Appellants
Mr H P Hasurkar, AGP for Respondent No. 1, 3
Mr K S Jhaveri for respondents No.19,22,25
32,34,38,40 and 46

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.P.BUCH

Date of decision: 27/12/2000

ORAL (COMMON) JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

Admit. The learned AGP, Mrs.Siddhi Talati waives service of notice of admission in LPA 504/96 and Mr H P Hasurkar waives service of notice of admission in LPA No. 1219/97.

These two Letters Patent Appeals under Clause 15 of the Letters Patent involve common questions of facts and law and therefore, with consent of the learned Advocates appearing for the respective parties, they have been heard together and are being disposed of by this common judgment.

2. The appellant-original petitioners in these two Letters Patent Appeals, were initially appointed as Armed police Constables. It is a common case of the appellants in these two appeals that on 6.3.1979, a circular was issued by the respondent to the effect that the candidate having educational qualification of SSC or more, be taken up in unarmed wing whereas the candidates having less educational qualifications may be taken up as Armed Police Constable.

3. They allege that the persons working in armed wing were made eligible for being transferred to unarmed wing by a circular dated 29.10.1985 issued by the Director General of Police and some Constables of police were actually transferred from armed wing to unarmed wing also, provided of course, this was on condition that the candidates desiring to opt for unarmed wing should possess SSC or higher educational qualification.

4. They further allege that they had also requested for their transfer from armed wing to unarmed wing, but their case was not properly and objectively considered. Therefore, they approached the court before the learned Single Judge by way of filing Special Civil Applications

No.2856/96 and 6822/87 unsuccessfully. Hence these LPAs.

5. Having regard to the fact-situation and the controversy between the parties and to the facts and circumstances of these Letters Patent Appeals, both the appeals have been taken up for final hearing with the consent of the learned Advocates for the parties.

6. We have heard the arguments advanced by the learned Advocates for the respective parties who have taken us through the records of these appeals. The appellants-original petitioners were admittedly selected and appointed as Armed Police Constables. They had applied for their transfer, appointment and posting as Unarmed Police Constable. They were unsuccessful in their attempts. Therefore, they preferred writ petitions also unsuccessfully. These facts are not at all in dispute.

7. The learned AGP has submitted that the minimum educational qualification for appointment as Unarmed Police Constable is that the candidate should have cleared SSC. The learned advocates for the appellants agree with this arguments. We, therefore, accept this factual aspect that the appellants-petitioners not having cleared SSC, will naturally not entitled to be appointed as Unarmed Police Constables.

8. The learned AGP has also argued that the cases of the appellants-original petitioners were considered and thereafter it was decided not to transfer them as Unarmed Police Constables. The learned Advocate for the appellants have argued at length that the appellants were never considered for the said purpose.

9. We have given our anxious thoughts on these submissions. We however, find no material on record of these appeals to show that the cases of these appellants were appropriately and objectively considered by the respondents. When the process of transfer from one branch to another has been undertaken from time to time and when some Armed Police Constables have been transferred at their request and appointed as Unarmed Police Constables, we feel that even the appellants-original petitioners appearing to be similarly situated, are also entitled to equal treatment. In other words, they are also entitled to be considered for being transferred and posted as Unarmed Police Constables. The respondents being "State" within Article 12 of the Constitution of India, are expected to treat all of its subjects with the same yardstick.

10. The learned AGP has also argued that now the process of transfer has been done away with. As against this, a circular memo dated 28.10.1985 issued by the Director General of Police and placed on records of these LPAs clearly contain the guidelines for transfer of police personnel from Armed wing to Unarmed Wing. The learned Advocate for the appellants-original petitioners have drawn our attention to the orders passed for transfer of police constables from armed branch to unarmed branch after 1988. It is true that by a subsequent circular dated 1.8.1988, the office of the Director General of Police has cancelled the earlier circular dated 28.10.1985. At the same time, we have been shown certain orders of transfer from one wing to another subsequent to the said circular of 1988. The learned AGP could not explain this position. However, her contention is that the old practice may have been continued in some districts. We are of the considered opinion that the State cannot have two separate practice. Therefore, it is necessary for the respondents to consider the the case of the appellants for transfer from one wing to another.

11. At the same time, it has to be made clear that while considering the case and requests of the appellants/original petitioners for transfer from armed wing to unarmed wing, it would naturally be open to the respondents to consider all aspects relevant for the purpose including the questions as to their eligibility and suitability for such appointment, applicability of circulars of 1985-1988 and other circulars issued before and/or after issue of the said circulars, recruitment rules framed for the recruitment to these two cadres, policy decisions taken at the highest level from time to time and orders of transfer from one wing to another issued from time to time by different authorities in different districts, the vacancies in these cadres as well as the select list and waiting lists available on hand etc.etc.

12. Under these circumstances. the appellants, original petitioners would then be entitled only to a relief of direction to the respondents to consider the request of the appellants for their transfer to unarmed wing. No direction can be issued to the respondents to transfer them to unarmed wing, since their transfer would depend upon several fact-situations, some of them have been illustrated hereinabove.

13. Any way, on going through the records of these

appeals and considering the rival contentions advanced by the learned Advocates for the respective parties, we find no material on records to show that the case of the petitioners for transfer to unarmed wing has been considered and, therefore, we are inclined to allow these appeals, as well as these writ petitions for a limited purpose of issue of directions to the respondents to consider the request of the appellants-original petitioners for their transfer from armed branch to unarmed branch since we find that even after the subsequent circular of 1988, cancelling the earlier one of 1985, also the police constables from armed branch have been transferred to unarmed branch and this fact-situation has not been satisfactorily explained by the respondents.

14. Nevertheless, the appellants-original petitioners in LPA No.504/96 in Special Civil Application no.2856/96 will not be entitled to a relief for quashing the second circular of 1988 (1.8.1988) or for a declaration that the persons recruited as armed police constables before that date are entitled to be transferred to unarmed branch. This is a matter of policy of the State Government and unless the policy is found to be unreasonable or irrational, the court would not step the field.

15. Same way, the appellants-original petitioners in both the appeals/Special Civil Applications will also not be entitled to a relief of direction to the respondents to transfer them from armed wing to unarmed wing in the State. At the best, the court can direct the respondents to consider their requests for their transfer from armed branch to unarmed branch.

16. These appellants will also not be entitled to a direction to the respondents to fill up the vacancies existing at present in unarmed branch only by transfer of police constables from armed branch. In that view of the matter, we are of a considered opinion that the only relief which could be granted to the appellants in both these appeals is to direct the respondents to objectively consider the cases of requests of these appellants for their transfer from armed wing to the unarmed wing. To this limited extent, these appeals are required to be allowed. Consequently, the Special Civil Applications will also be required to be allowed to the said limited extent.

17. In the facts and circumstances, the respondents are hereby directed to consider the cases of the appellants-original petitioners for their transfer from

armed branch to unarmed branch having regard to the observations made in this judgment in accordance with the State Government Rules and Regulations, circulars and policy decisions recorded from time to time. The respondents shall consider and decide their requests, as early as, possible and preferably within three months from the date of receipt of this order by them. These two appeals, as well as, the two Special Civil Applications are accordingly partly allowed to the extent indicated hereinabove only, without costs .

27.12.2000 [J N Bhatt, J.]

[D P Buch, J.]

msp